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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

W. B. WORTHEN COMPANY, AGENT, GEORGE G. WORTHEN AND MOLLIE P. WORTHEN ..... *Appellants,*

v. No. 856

MRS. W. D. THOMAS ..... *Appellee.*

APPELLANTS' BRIEF OPPOSING APPELLEE'S MOTION TO DISMISS OR AFFIRM AND IN ANSWER TO STATEMENT AGAINST JURISDICTION

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BRIEF OPPOSING APPELLEE'S MOTION TO DISMISS OR AFFIRM AND IN ANSWER TO STATEMENT AGAINST JURISDICTION

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v. No. .....

MRS. W. D. THOMAS ..... *Appellee.*

APPELLANTS' BRIEF OPPOSING APPELLEE'S MOTION TO DISMISS OR AFFIRM AND IN ANSWER TO STATEMENT AGAINST JURISDICTION

STATEMENT OF THE CASE

This appeal questions the validity of an act of the Arkansas Legislature adopted March 16, 1933 (as applied to an antecedent debt action) which exempts all proceeds of life insurance policies payable to any resident of the state from seizure upon any judicial process of any court. (Acts of Arkansas, 49th General Assembly, 1933, Act 102, page 321. The act is published in full in an appendix to this brief, page 24). This appeal is taken under the provisions of United States Code, Title 28, Section 344, Judicial Code, Section 237, and amendments, and the point was raised and maintained at all stages below that the statute and as construed by the Arkansas courts impairs the valid-

ity of a contract, and the protection of the appropriate provisions of the United States Constitution was specifically invoked (Tr., 22, 25, 41, 44-46).

Appellant, W. B. Worthen Company, Agent, recovered a judgment in the amount of $1,200 against appellee for the payment of money upon a contract in the Circuit Court of Pulaski County, Arkansas, August 31, 1932 (Tr. 9-10. The other appellants are supersedeas sureties upon the appeal to the Arkansas Supreme Court and judgment was rendered there against them for costs.) Upon allegations filed in circuit court by appellant, W. B. Worthen Company, Agent, a writ of garnishment issued directed to a life insurance company which owed appellee $5,000 as the proceeds of a policy upon the life of her husband (Tr. 11-12; 16-17), who died March 5, 1933 (Tr. 16-17, 30). The writ was served March 10, 1933 (Tr. 13-14). Under the statutes of Arkansas, as construed by its Supreme Court, such a writ, upon its service, becomes a lien (Crawford & Moses' Digest, Arkansas Statutes, 1921, Sec. 4906; *Smith* v. *Butler*, 72 Ark. 350; *St. Louis Southwestern Ry. Co.* v. *Vanderberg*, 91 Ark. 252). March 16, 1933, the General Assembly of the State of Arkansas adopted Act 102 exempting the proceeds of life insurance policies from judicial process. The act provides:

> "Section 1. All monies paid or payable to any resident of this state as the insured or beneficiary designated under any insurance policy or policies providing for the payment of life, sick, accident and/or disability benefits shall be exempt from liability or seizure under judicial process of any court, and shall not be subjected to the payment of any debt by contract or otherwise by any writ, order, judgment or decree of any court * * *.
>
> "Section 2. Repeals all conflicting laws except Acts 76 and 141 of the Acts of the General Assembly,

1931. (Act 76 of the Acts of Arkansas, 1931, p. 214, exempts the proceeds of all life insurance payable to a person other than himself from the debts of the insured; Act 141 of the Acts of Arkansas, 1931, p. 378, provides that married women may insure the lives of their husbands and the proceeds shall be free from the debts of the insured).

"Section 3. It is ascertained and hereby declared that the vast majority of those now holding insurance policies are compelled, owing to the desperate financial situation now existing, to make every possible sacrifice in order to maintain their policies in force for the benefit of themselves and their families, and that in most instances whatever rights they hold in said policies constitute their entire resources, and to be deprived of the same will seriously affect the well being of a great number of the citizens of this state who would thereby be reduced to the position of becoming public charges to the great harm and detriment of the entire state, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage."

(See appendix to this brief, page 24, for full copy of the act, also it is set forth *in extenso* in appellant's jurisdictional statement, Tr. 55-56.)

Upon motion of appellee and the garnished insurance company, the Pulaski Circuit Court dismissed the writ of garnishment (Tr. 30-31). Appellant, W. B. Worthen Company, Agent, opposed the dismissal, pleading that the statute and such action of the court would impair the obligation of the contract which was the foundation of its judgment, and destroy its vested rights, and invoking Article 1, Section 10, of the Constitution of the United States (Tr. 22-25). An appeal was taken to the Supreme Court of Arkansas. The judgment of the circuit court was superseded.

George G. Worthen and Mollie P. Worthen being sureties on the supersedeas bond (Tr. 32-33). On November 27, 1933, the Supreme Court of Arkansas affirmed the action of the circuit court, construing the statute as being valid and specifically deciding the United States constitutional question involved against appellants' claim and entered a judgment against all three of these appellants for costs (Tr. 37-43. See *W. B. Worthen Co.* v. *Thomas,* Vol. 52, No. 10, Arkansas Law Reporter, page 547; S. C. 65 S. W. (2d), page 917. The opinion has not been officially printed; a full copy is published in the appendix to this brief, pages 23-29). This appeal was allowed February 9, 1934, by the chief justice of the Arkansas Supreme Court (Tr. 52), and the judgment of the Supreme Court of Arkansas superseded (Tr. 53-54). Appellee filed in due time under the rules of this court her motion to dismiss or affirm the appeal, and statement in denial of jurisdiction (Tr. 62-68). The motion to affirm states that it is manifest that the appeal was taken for delay only, and that the jurisdictional question upon which the appeal is founded is frivolous (Tr. 68). The jurisdictional question under the Constitution of the United States was raised in the Pulaski Circuit Court on the appellant, W. B. Worthen Company, Agent's, response to the appellee's and insurance company's motions to dismiss the writ of garnishment, in these words:

> "If said Act 102 (referring to the Act of the Arkansas Legislature adopted March 16, 1933) were to cancel and set aside liens and rights of parties which were in effect at the time of its passage, thus reaching back to set aside rights then in effect, it would be a violation of Article 1, Section 10, of the Constitution of the United States which provides that no state shall pass any law impairing the obligations of contracts" (Tr. 25).

This objection was renewed in the Supreme Court of Arkansas by appellant, W. B. Worthen Company, Agent, as is shown by this statement contained in that court's opinion in this case, delivered November 27, 1933:

> "The only question for determination here is the constitutionality of Act 102 of 1933, approved March 16, 1933. It is insisted that said act is violative of section 10, article 1, of the Constitution of the United States as impairing the obligations of a contract. * * * No creditor has the right to any particular remedy and such statutes prohibit only the issuance of garnishments against such funds as already held by our court; and neither does it violate the Constitution of the United States in impairing obligations of a contract by prohibiting the use of certain procedure in subjecting certain insurance funds to the payment of a judgment against the beneficiary in an insurance policy. * * * The judgment is affirmed." (Tr. 41-43; also appendix to this brief, pages 23 to 29).

On petition for rehearing, filed December 13, 1933, in the Supreme Court of Arkansas, appellant, W. B. Worthen Company, Agent, renewed its claim that the act as construed violates its right of contract as assured by the Constitution of the United States (Tr. 44), and also raised the question that due process of law was denied as assured by the Fourteenth Amendment (Tr. 44). This petition for rehearing was overruled January 8, 1934 (Tr. 47). On February 9, 1934, the appellants filed in the Supreme Court of Arkansas petition for allowance of appeal, assignment of errors (Tr. 49-51), jurisdictional statement (Tr. 55-59), prayer for reversal (Tr. 51) and praecipe (Tr. 2-3). The appeal was allowed by the chief justice of the Supreme Court (Tr. 52), supersedeas bond filed and approved (Tr. 53-54), citation issued (Tr. 61), and petition for appeal, order allowing appeal,

assignment of errors, statement as to jurisdiction, praecipe, and citation were served on the same day (Tr. 60). The assignment of errors states:

"1. The Supreme Court of Arkansas erred in depriving the appellant, W. B. Worthen Company, Agent, of all substantial remedy for the collection of its judgment by process of garnishment, which remedy was in existence under the laws of the State of Arkansas at the time the debt, which is the basis of appellant's judgment herein, was contracted and was in existence at the time the judgment was rendered and at the time the writ of garnishment issued and the lien thereof attached and at the time said Act 102 was adopted by the Arkansas General Assembly. The judgment of the court deprives appellant, W. B. Worthen Company, Agent, of all effectual remedy and leaves it with no means to collect its judgment from the fund arising from said policy of insurance.

"2. The Supreme Court of Arkansas erred in holding that Act 102 of the General Assembly of the State of Arkansas adopted March 16, 1933, is valid as applied to said appellant's rights in this cause. The court erred in holding that the act is valid in its provision that all proceeds of life, sick, accident or disability benefit policies shall be exempt from liability or seizure under judicial process of any court and shall not be subjected to the payment of any debt by contract or otherwise by any writ, order, judgment or decree of any court.

"3. The Supreme Court of Arkansas erred in vacating the garnishment which said appellant had sued out and by which it had obtained a lien upon the proceeds of life insurance policy payable to appellee who is indebted to appellant, W. B. Worthen Company, Agent, upon a judgment in this cause for the payment of money, such writ of garnishment having duly issued and a lien thereunder attached before the adoption of Act 102 named above.

"6. The Supreme Court of Arkansas erred in holding that said Act 102 as applied in this cause does not impair the obligation of contracts, contrary to the provisions of the Constitution of the United States, Article 1, Section 10.

"7. The Supreme Court of Arkansas erred in holding that Act 102 does not abridge the privileges and immunities of appellant, W. B. Worthen Company, Agent, as guaranteed by the Fourteenth Amendment of the Constitution of the United States, and that it does not deprive said appellant of its property without due process of law contrary to the provisions of said amendment" (Tr. 49-50).

The appellant's statement as to the jurisdiction of this court was filed with the petition for appeal, February 9, 1934, and served upon the appellee the same date (Tr. 55-60). The statement described the appeal as being taken under United States Code, Title 28, Section 344, Judicial Code, Section 237, and amendments, involving the validity under the Constitution of the United States of an act adopted by the General Assembly of the State of Arkansas and approved March 16, 1933, and set out the act *in extenso* (Tr. 55-56), and in narrative form described the case (Tr. 56-58), and to sustain the jurisdiction of this court cited:

Arthur Bronson v. *John H. Kinzie*, 1 Howard 311.

Gunn v. *Barry*, 15 Wall. 610.

Edwards v. *Kearzey*, 96 U. S. 595.

Memphis v. *United States*, 97 U. S. 293.

Antoni v. *Greenhaw*, 107 U. S. 798.

Conn. Mutual Life Ins. Co. v. *Cushman*, 108 U. S. 65.

Port of Mobile v. *United States*, 116 U. S. 305.

Seibert v. *United States*, 122 U. S. 294.

McGahey v. *Virginia*, 135 U. S. 694.

Louisiana v. *New Orleans*, 215 U. S. 178.

Kuhn v. *Fairmont Coal Co.*, 215 U. S. 369.

Northern Pacific Railway Co. v. *Wall*, 241 U. S. 91.

Bank of Minden v. *Clement*, 256 U. S. 126.

Shwab v. *Doyle*, 258 U. S. 534.

Hardware Dealers' Mutual Fire Ins. Co. v. *Glidden Company*, 284 U. S. 151.

Appellee's statement in denial of jurisdiction (Tr. 62-67) states that appellants have failed to comply with rule 12 as amended in that they did not file their statement as to jurisdiction with the petition for appeal. It is shown above that this was done. The statement also says that no question under the Fourteenth Amendment was raised below. This is shown to have been done on petition for rehearing (Tr. 58, 44-45). The appellee contends that a judgment is not a contract within the meaning of the Constitution. These appellants contend that the act of the Legislature as construed by the Arkansas Supreme Court invalidates the contract on which the judgment was based. Appellee quotes in full the opinion of the Arkansas Supreme Court as showing that the appeal should be affirmed or dismissed. These appellants are contending that the decision should be reversed because it construes the statute so as to destroy appellants' contractual rights.

We submit that there is nothing in the statement in denial of jurisdiction or in the motion to dismiss or affirm which should be taken against this appeal, and that the appeal is not frivolous. All judicial power to enforce the

judgment against this fund is taken away by the decision, and the vested right of a garnishment lien is destroyed.

(e) *Specification of Assigned Errors*

The errors assigned are that the statute as construed by the Arkansas Supreme Court, as affecting the antecedent contract of the parties and the lien of the garnishment in this case, violates the assurances of Article 1, Section 10, and the due process provisions of the Fourteenth Amendment to the Constitution of the United States, in that the obligation of appellant, W. B. Worthen Company, Agent's, contract with appellee is impaired, the right and means of collecting its judgment, and the lien of the garnishment, a vested right, being destroyed, and leaving no adequate means of remedy. (Appellants, George G. Worthen and Mollie P. Worthen, are supersedeas sureties for the other appellant in the Supreme Court of Arkansas, and judgment was there rendered against them for costs.)

(f) BRIEF AND ARGUMENT

A short statement of the appeal is that appellant, W. B. Worthen Company, Agent, recovered a judgment in the sum of $1,200 against appellee for the payment of money upon a contract and garnished a life insurance company which owed appellee upon a policy on the life of her husband the sum of $5,000. The garnishment became a lien. After this, the Legislature enacted a law exempting from all judicial process the proceeds of life insurance policies payable to residents of the state. The trial court and the Arkansas Supreme Court construed this statute so as to vacate the lien of the garnishment and exempt the fund from judicial process. It has been shown in the foregoing statement of the case that the Federal constitutional questions were raised and maintained at all times. We, of course, agree that in remedial and procedural legislation a "state may choose the remedy best adapted, in the legislative judgment, to protect the interests concerned," followed by the proviso that "its choice is not unreasonable or arbitrary." *Insurance Company* v. *Glidden Co.*, 284 U. S. 151. Garnishment is provided for in Arkansas by statute. Crawford & Moses' Digest of the Statutes of Arkansas, 1921, Section 4906, provides as follows:

> "In all cases where any plaintiff may begin an action in any court * * * or may have obtained a judgment * * * and such plaintiff shall have reason to believe that any other person is indebted to the defendant, or has in his hands or possession * * * moneys, credits * * * belonging to such defendant, such plaintiff may sue out a writ of garnishment, setting forth such claim, demand or judgment, and commanding the officer charged with the execution thereof to summon the person therein named, as garnishee, to appear at the re-

turn day of such writ, and answer what * * * moneys, credits * * * he may have in his hands or possession belonging to such defendant to satisfy said judgment * * *."

Section 4911 provides for the garnishee to answer.

Section 4913 provides:

"* * * if the issue be found for the plaintiff, judgment shall be entered for the amount found due from the garnishee to the defendant in the original judgment, or so much thereof as will be sufficient to satisfy the plaintiff's judgment, with costs."

Construing this statute, the Supreme Court of Arkansas has held that the issuance and service of the writ creates a lien upon the credit or the fund so attached.

"By the service of the writ of garnishment a lien is fixed upon the indebtedness of the garnishee to the defendants, and no subsequent arrangement or cancellation between the garnishee and defendants could destroy the lien or affect the rights of the plaintiffs."

Desha v. *Baker*, 3 Ark. 509.

Martin v. *Foreman*, 18 Ark. 249.

Smith v. *Butler*, 72 Ark. 350.

St. Louis Southwestern Ry. Co. v. *Vanderberg*, 91 Ark. 252.

In *Gunn* v. *Barry*, 15 Wallace 610, this court said, in holding void a state statute which so enlarged exemptions as to deprive an antecedent judgment creditor of his judgment lien:

"No one can cast his eyes over the former and later exemptions without being struck by the greatly increased magnitude of the latter * * *. The effect of the act in question, under the circumstances of this

judgment, does not indeed merely impair; it annihilates the remedy. There is none left. But the act reaches still further. It withdraws the land from the lien of the judgment, and thus destroys a vested right of property which the creditor had acquired in the pursuit of the remedy to which he was entitled by the law as it stood when the judgment was recovered. It is, in effect, taking one person's property and giving it to another without compensation. This is contrary to reason and justice, and to the fundamental principles of the social compact. * * * The legal remedies for the enforcement of a contract, which belong to it at the time and place where it is made, are a part of its obligation. A state may change them; provided the change involves no impairment of a substantial right. If the provision of the Constitution or the legislative act of a state, fall within the category last mentioned, they are to that extent utterly void. They are, for all the purposes of the contract which they impair, as if they had never existed. * * * The jurisdictional prohibition which they contain with respect to the courts of the state, can, therefore, form no impediment to the plaintiff in error in the enforcement of his rights touching this judgment, as those rights are recognized by this court."

It was said in *Terry* v. *Anderson*, 5 Otto 628:

"In all cases of alteration of remedies, the question is one of reasonableness."

And this, of course, is the rule of this court in the Minnesota moratorium case (*Home Building & Loan Ass'n* v. *Blaisdell*, Supreme Court Reporter, Vol. 54, No. 5, p. 231). The effect of the decision of the Supreme Court of Arkansas is to make exempt retrospectively all proceeds of life insurance policies. Such an exemption is so lacking in uniformity and may be so grossly excessive in value as to be constitutionally void under the decisions of this court. This is not

an exemption statute in any true or reasonable sense. Arkansas has long had in effect exemption laws, as follows:

> Unmarried persons $200 and married persons $500 in personal property in addition to wearing apparel. Homestead, country, not exceeding 160 acres or $2,500 in value, minimum 80 acres; city not exceeding 1 acre or $2,500 in value, minimum ¼ acre (Arkansas Constitution 1874, Art. 9, Sec. 1-5). Sixty days wages of laborers and mechanics (Crawford & Moses' Digest, 1921, Sec. 5546.) The proceeds of life insurance for the benefit of a wife or children are exempt from the claims of creditors of the *insured* (Acts of Arkansas 1931, p. 378). Fraternal society insurance policy funds are exempted (Crawford & Moses' Digest, 1921, Sec. 6096; Acts of Arkansas, 1925, p. 398).

The usual judicial process for enforcement of judgments is in force in the state, execution, attachment, garnishment. Without the aid of such process a judgment is a nullity. This court will know that life insurance is maintained in varying amounts; that some individuals are insured in very large amounts; that the total of such insurance in force is in billions of dollars. Its proceeds sometimes enrich beneficiaries, become substantial wealth, and no sound constitutional policy calls for the entire exemption of such beneficiaries or insured persons, "residents" of Arkansas, from all judicial process for the collection of an antecedent debt from such funds. There is no appropriate remedy known to the law for levying, that is attaching, and executing a judgment as to such a fund except that of garnishment. The fund arising from an insurance policy would not be subject to physical levy. It is but a credit. This court, in deciding *Minden* v. *Clement*, 256 U. S. 126, quoted: *Sturges* v. *Crowninshield*, 4 Wheat. 122, 197, 198,

and *Planters Bank* v. *Sharp*, 6 How. 301, 327, which hold that a test that a contract has been impaired is that its value has by legislation been substantially diminished. The footnotes to the majority opinion in *Home Building Association* v. *Blaisdell* (January 8, 1934) cite the Bank of Minden case as one of those in which the change of remedies destroyed substantial rights.

It is true that there is an emergency provision in the statute which is involved. That provision bears no relation to its validity in a constitutional sense. Hard times, financial distress, debt and panic have never been taken here as an excuse for the destruction of contracts and vested rights.

In *Edwards* v. *Kearzey*, 6 Otto 595, this court declared unconstitutional exemption laws adopted by the state of North Carolina which affected contracts made before the adoption of the constitution. We think that all legislatures and courts should have before them some of the matter contained in that opinion. After stating the facts as to the case and defining the words "impair" and "obligation," the court said:

> "The obligation of a contract includes every thing within its obligatory scope. Among these elements nothing is more important than the means of enforcement. This is the breath of its vital existence. Without it, the contract, as such, in the view of the law, ceases to be, and falls into the class of those 'imperfect obligations,' as they are termed, which depend for their fulfillment upon the will and conscience of those upon whom they rest. The ideas of right and remedy are inseparable. 'Want of right and want of remedy are the same thing.' 1 Bac. Abr., tit. Actions in General, letter B.
>
> "In *Von Hoffman* v. *Quincy*, 4 Wall. 535 (71 U. S. 18 403), it was said: 'A statute of frauds embracing

pre-existing parol contracts not before required to be in writing would affect its validity. A statute declaring that the word "ton" should, in prior as well as subsequent contracts, be held to mean half or double the weight before prescribed would affect its construction. A statute providing that a previous contract of indebtment may be extinguished by a process of bankruptcy would involve its discharge; and a statute forbidding the sale of any of the debtor's property under a judgment upon such a contract would relate to the remedy.'

"It cannot be doubted, either upon principle or authority, that each of such laws would violate the obligation of the contract, and the last not less than the first. These propositions seem to us too clear to require discussion. It is also the settled doctrine of this court, that the laws which subsist at the time and place of making a contract enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. This rule embraces alike those which affect its validity, construction, discharge and enforcement. *Von Hoffman* v. *Quincy* (*supra*); *McCracken* v. *Hayward*, 2 How. 608.

"In *Green* v. *Biddle*, 8 Wheat. 1, this court said, touching the point here under consideration: 'It is no answer, that the Acts of Kentucky now in question are regulations of the remedy, and not of the right to the lands. If these Acts so change the nature and extent of existing remedies as materially to impair the rights and interests of the owner, they are just as much a violation of the compact, as if they overturned his rights and interests.'

" 'One of the tests that a contract has been impaired is, that its value has by legislation been diminished. It is not by the Constitution to be impaired at all. This is not a question of degree or manner or cause, but of encroaching in any respect on its obligation—dispensing with any part of its force.' *Bk.* v. *Sharp*, 6 How. 301.

"It is to be understood that the encroachment thus denounced must be material. If it be not material, it will be regarded as of no account.

"These rules are axioms in the jurisprudence of this court. We think they rest upon a solid foundation. Do they not cover this case; and are they not decisive of the question before us? * * *

"We say, as was said in *Gunn* v. *Barry*, 15 Wall. 622 (82 U. S. XXI, 214), that no one can cast his eyes upon the new exemptions thus created without being at once struck with their excessive character, and hence their fatal magnitude. The claim for the retrospective efficacy of the Constitution or the laws cannot be supported. Their validity as to contracts subsequently made admits of no doubt. *Bronson* v. *Kinzie, supra.*

"The history of the National Constitution throws a strong light upon this subject. Between the close of the War of the Revolution and the adoption of that instrument, unprecedented pecuniary distress existed throughout the country.

" 'The discontents and uneasiness, arising in a great measure from the embarrassment in which a great number of individuals were involved, continued to become more extensive. At length, two great parties were formed in every State, which were distinctly marked, and which pursued distinct objects with systematic arrangement.' 5 Marshall, L. of Washington, 75. One party sought to maintain the inviolability of contracts, the other to impair or destroy them. 'The emission of paper money, the delay of legal proceedings, and the suspension of the collection of taxes, were the fruits of the rule of the latter, wherever they were completely dominant.' 5 Marshall, L. of Washington, 86.

" 'The system called justice was, in some of the States, iniquity reduced to elementary principles. * * * In some of the States, creditors were treated as outlaws. Bankrupts were armed with legal authority to be persecutors and, by the shock of all confidence, society

was shaken to its foundations.' Fisher Ames' Works; ed. of 1859, 120. * * *

" 'The effects of these laws interfering between debtors and creditors were extensive. They destroyed public credit and confidence between man and man, injured the morals of the people, and in many instances insured and aggravated the ruin of the unfortunate debtors for whose temporary relief they were brought forward.' 2 Ramsey, Hist. S. C., 429. * * *.

"We think the views we have expressed carry out the intent of contracts and the intent of the Constitution. The obligation of the former is placed under the safeguard of the latter. No State can invade it; and Congress is incompetent to authorize such invasion. Its position is impregnable, and will be so while the organic law of the nation remains as it is. The trust touching the subject with which this court is charged is one of magnitude and delicacy. We must always be careful to see that there is neither non-feasance nor misfeasance on our part.

"The importance of the point involved in this controversy induces us to restate succinctly the conclusions at which we have arrived, and which will be the ground of our judgment.

"The remedy subsisting in a State when and where a contract is made and is to be performed is a part of its obligation, and any subsequent law of the State which so affects that remedy as substantially to impair and lessen the value of the contract is forbidden by the Constitution, and is, therefore, void. * * *

"The debts in question were incurred before the exemptions took effect. The court now holds that the exemptions are invalid. In this I concur, not for the reason that any and every exemption made after entering into a contract is invalid, but that the amount here exempted is so large, as seriously to impair the creditor's remedy for the collection of the debt. * * *

"In my judgment, the exemption provided for by the North Carolina Constitution is so large, that, in

regard to the mass of contracts and the situation and circumstances of debtors as they are ordinarily found to exist, it would seriously affect the efficiency of remedies for the collection of debts, and that it must, therefore, be held to be void."

In *Memphis* v. *United States*, 7 Otto 293, it is said:

"It is an acknowledged principle that a creditor by contract has a vested right to the remedies for the recovery of the debt which existed at law when the contract was made, and the Legislature of a State cannot take them away without impairing the obligation of the contract, though it may modify them, and even substitute others, if a sufficient remedy be left, or another sufficient one be provided. The law is, in effect, a part of the contract. * * *

"If, as asserted by Blackstone, the judgment was itself a contract, the remedies of its enforcement, existing at the time when it was recovered, could not be taken away either by direct legislation, or indirectly, by repealing the law which gave those remedies. And if the judgment may not be considered a contract of record, still the vested rights it gave to the relator, whatever they were, are equally secure against legislative invasion."

In *Bronson* v. *Kinzie*, 1 How. 311, 317, it is said:

"And no one, we presume, would say that there is any substantial difference between a retrospective law declaring a particular contract or class of contracts to be abrogated and void and one which took away all remedy to enforce them, or incumbered it with conditions that rendered it useless or impracticable to pursue it."

In *McGahey* v. *State of Virginia*, 135 U. S. 662, it is said:

"It is well settled by the adjudications of this court that the obligation of a contract is impaired, in the

sense of the Constitution, by any Act which prevents its enforcement, or which materially abridges the remedy for enforcing it, which existed at the time it was contracted, and does not supply an alternative remedy equally adequate and efficacious."

In *Louisiana* v. *New Orleans*, 215 U. S. 180, the court quoted Mr. Justice Field as saying in *Louisiana* v. *New Orleans*, 102 U. S. 203, 205:

> " 'The obligation of a contract, in the constitutional sense, is the means provided by law by which it can be enforced,—by which the parties can be obliged to perform it. Whatever legislation lessens the efficacy of these means impairs the obligation'."

In *Kuhn* v. *Fairmont Coal Co.*, 215 U. S. 349, 369, it is said:

> "At all events, the decisions of this court are numerous that the laws which prescribe the mode of enforcing a contract, *which are in existence when it is made*, are so far a part of the contract that no changes in these laws which seriously interfere with that enforcement are valid, because they impair its obligation, within the meaning of the Constitution of the United States."

In *Northern Pacific Ry.* v. *Wall*, 241 U. S. 87, 91, it is said:

> "As this court often has held, the laws in force at the time and place of the making of a contract, and which affect its validity, performance and enforcement, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms."

The prospective operation of the statute is, of course, not involved in this appeal—only its retrospective—that is, its effect upon a debt by contract in existence at the time

of its adoption. We respectfully say that the Supreme Court of Arkansas should have construed the statute as being prospective only in its operation.

In *Shwab* v. *Doyle*, 258 U. S. 534, it is said:

> "The initial admonition is that laws are not to be considered as applying to cases which arose before their passage unless that intention be clearly declared. (Citing cases.) The comment of Story is, 'retrospective laws are, indeed, generally unjust; and, as has been forcibly said, neither accord with sound legislation nor with the fundamental principles of the social compact.'"

We respectfully submit that the motion to dismiss or affirm should be overruled, that the appellee's statement against the jurisdiction of this court is not well taken, and that the judgment of the Supreme Court of Arkansas should be reversed.

Respectfully submitted,

HENRY M. ARMISTEAD,
EUGENE H. MURPHY,
FRANCIS T. MURPHY,
Attorneys for Appellants.

(g) APPENDIX

In the Supreme Court of Arkansas, November 27, 1934.

W. B. Worthen Company, Agent, v. Thomas.

STATEMENT BY THE COURT

Appellant, W. B. Worthen Co., Agent, plaintiff below, procured judgment *in personam* against one Ralph Thomas and Mrs. W. D. Thomas, known also as Van Cleve Thomas, appellee herein, doing business as co-partners under the firm name and style of Enterprise Harness Company, based upon personal service of summons upon each of said defendants, in the Pulaski Circuit Court, Second Division, on August 31, 1932, in the sum of $1,200 with interest thereon at 6 per cent per annum from July 5, 1932, until paid and costs. The judgment was not appealed from and remains in full force.

Pursuant to said judgment the appellant caused writs of garnishment with allegations and interrogatories to be served upon certain persons, naming them, who answered denying having any property belonging to either Ralph Thomas or Mrs. W. D. Thomas, and stating further that they were not indebted to them, or either of them, in any amount.

That appellant caused a writ of garnishment based upon the judgment aforesaid with allegations and interrogatories to be served upon the Missouri State Life Insurance Company by the sheriff of Pulaski County by delivering same to U. A. Gentry, State Insurance Commissioner, the agent designated by said garnishee for service of process upon it in Pulaski County, wherein appellant alleged that

said garnishee had in its hands and possession $5,000 belonging to appellee as shown by the sheriff's return.

The Legislature enacted Act 102 at its 1933 session, the title and first section of which reads as follows:

ACT 102

"An Act to Extend the Exemption Laws of this State.

"*Be It Enacted by the General Assembly of the State of Arkansas*:

"Section 1. All moneys paid or payable to any resident of this State as the insured or beneficiary designated under any insurance policy or policies providing for the payment of life, sick, accident and/or disability benefits shall be exempt from liability or seizure under judicial process of any court, and shall not be subjected to the payment of any debt by contract or otherwise by any writ, order, judgment or decree of any court, provided, that the validity of any sale, assignment, mortgage, pledge or hypothecation of any policy of insurance or if any avails, proceeds or benefits thereof, now made, or hereafter made, shall in no way be affected by the provisions of this act.

"Approved: March 16, 1933."

Appellee filed a motion to dismiss the writ of garnishment against the life insurance company issued and served on March 10, 1933, and for the further purpose of scheduling a certain sum of money owed her by the aforesaid insurance company as exempt from garnishment or seizure under the provisions of Act 102 of 1933, which she alleged exempted the money due her from garnishment or seizure under the judicial process of any court.

On April 6, 1933, the insurance company answered the garnishment, stating that it had issued theretofore to W. D. Thomas its policy No. 86800 in the amount of $5,000; "That appellee herein, Mrs. W. D. Thomas, known also as Van Cleve Thomas, was designated as beneficiary therein, and that she had made claim on it for the proceeds of said policy. That by reason of certain accumulations on said policy that it admitted an indebtedness thereunder in the amount of five thousand fifty-seven and 80/100 dollars ($5,057.80), and that it was ready to pay this amount to said beneficiary when authorized to do so by an order of the Pulaski Circuit Court."

It stated further: "That by the provisions of Act 102, enacted by the General Assembly of the State of Arkansas, at its 1933 session, all moneys payable to any resident of this State under a policy of insurance are exempt and not subject to seizure under judicial process of any court. That appellee was then a resident of this State," and prayed the court to enter an order discharging it of all liability to appellant, and that it be authorized to pay the proceeds of the policy to appellee.

On April 7, 1933, the court upon a petition of appellee found that $2,000 was a sufficient amount to satisfy any claim or judgment that appellant could have against any of the funds held by the insurance company, and ordered upon the payment of that amount into the registry of the court by it, that said company should be discharged from any liability arising from the writ of garnishment and that it be discharged with its costs.

On April 20, 1933, appellant filed its response to the motion to dismiss the writ of garnishment, and on April 29 it filed an amendment thereto in which it resisted the

aforesaid motion to dismiss, challenging Act 102 of 1933 as unconstitutional and void.

On the hearing the court found that the insurance company had paid $2,000 into the registry of the court pursuant to its order and was discharged from further liability as garnishee, which was held subject to further order of the court, and that said sum of money was exempt from liability or seizure under any judicial process of any court and granted said motion and schedule. Ordered that the money paid into court be released from liability under the garnishment and ordered the clerk to pay over the money to Mrs. W. D. Thomas, or her attorney of record, taking a receipt therefor on the margin of the record. Appellant excepted to the court's action in granting the motion and schedule and prayed an appeal to the Supreme Court.

KIRBY, J., (after stating the facts):

The only question for determination here is the constitutionality of act 102 of 1933, approved March 16, 1933.

It is insisted that said act is violative of section 10, article 1, of the Constitution of the United States as impairing the obligations of a contract, and section 17 of article 2 of the Constitution of Arkansas.

In *Acree* v. *Whitley*, 136 Ark. 149, 206 S. W. 137, it was said: "It may be stated at the outset that section 21 does not relate to the absolute exemption of personal property allowed a resident of this state as exempt from certain debts and liabilities under sections 1 and 2 of article 9 of our Constitution. The reason is, beneficiaries in insurance policies, as well as other persons, are obliged to pay judgments against them in favor of third persons and exemptions

from execution and other process of the court are fixed by the sections of the Constitution above referred to. The statute in question was not enacted for the purpose of allowing beneficiaries exemptions which they are not entitled to under the Constitution and laws of this State, but the act was passed for the purpose of exempting these funds from the operation of our general statutes regulating issuance of garnishments and proceedings thereunder."

It is true this act is broader in its terms than the one construed in the above case, since it exempts all moneys payable to any resident of the State: "as the insured or beneficiary designated under any insurance policy or policies providing for the payment of life, etc. * * * from liability or seizure under judicial process of any court, and shall not be subject to the payment of any debt by contract or otherwise by any writ, order, judgment or decree of any court, * * * provided that the validity of any sale, mortgage, or hypothecation of any policy of insurance, etc., shall in no way be affected by the provisions of this act."

As said by this court of the other statute, it can well be said of this statute, Act 102 of 1933, that it "does not relate to the absolute exemption of personal property allowed by a resident of this state as exempt from certain debts and liabilities under sections 1 and 2 of article 9 of our Constitution. * * * was not enacted for the purpose of allowing beneficiaries exemptions which they are not entitled to under the Constitution and law of this State, but the act was passed for the purpose of exempting these funds from the operation of our general statutes regulating issuance of garnishments and proceedings thereunder."

This could be done without violation of our Constitution. No creditor has the right to any particular remedy

and such statutes prohibit only the issuance of garnishments against such funds as already held by our court; and neither does it violate the Constitution of the United States in impairing the obligations of a contract by prohibiting the use of certain procedure in subjecting certain insurance funds to the payment of a judgment against the beneficiary in an insurance policy * * * funds that were not in existence when the judgment was obtained and were allowed to be provided for by the insured whom the law allows to expend a certain amount of money to provide insurance for the benefit of his wife.

The law allows the equities in cases to be considered in the construction of the statutes relating to the subject in question. *Evans-Snider-Buel Co.* v. *McFadden*, 58 L. R. A. 900.

The judgment is affirmed.

MEHAFFY, J., dissents.

ACT 102

"AN ACT to Extend the Exemption Laws of This State.

"*Be It Enacted by the General Assembly of the State of Arkansas*:

"Section 1. All moneys paid or payable to any resident of this state as the insured or beneficiary designated under any insurance policy or policies providing for the payment of life, sick, accident and/or disability benefits shall be exempt from liability or seizure under judicial process of any court, and shall not be subjected to the payment of any debt by contract or otherwise by any writ, order, judgment, or decree of any court, provided, that the validity

of any sale, assignment, mortgage, pledge or hypothecation of any policy of insurance or if any avails, proceeds or benefits thereof, now made, or hereafter made, shall in no way be affected by the provisions of this act.

"Section 2. All laws and parts of laws in conflict herewith are hereby repealed, provided, however, that nothing in this act shall be construed to repeal, modify or alter the provisions of Acts 76 and 141 of the Acts of the General Assembly of 1931.

"Section 3. It is ascertained and hereby declared that the vast majority of those now holding insurance policies are compelled, owing to the desperate financial situation now existing, to make every possible sacrifice in order to maintain their policies in force for the benefit of themselves and their families, and that in most instances whatever rights they hold in said policies constitute their entire resources, and to be deprived of the same will seriously affect the well being of a great number of the citizens of this state who would thereby be reduced to the position of becoming public charges to the great harm and detriment of the entire state, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage.

"Approved March 16th, 1933."

Acts of Arkansas, Forty-ninth General Assembly, 1933, page 321.